


# Administrative Office of the Courts

Chief Justice Christine M. Durham  
Utah Supreme Court  
Chair, Utah Judicial Council

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## MEMORANDUM

To: Julia D'Alesandro, Audit Dept.  
From:  Brent Johnson, General Counsel  
Re: Fine Refund  
Date: June 17, 2002

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This memorandum is in response to your question about the Justice Court's practice of refunding, after a specified period of time, a portion of a fine that has already been paid. I am concerned about the practice and would prefer that the court do things another way. I do not believe that the court has the authority to order refunds in this manner.

A court definitely has control over the types of sentences that it issues and it has control over a defendant's compliance with the sentence. However, there are limitations on the court's authority. The court is limited on the extent of a sentence that it can impose, and the court is limited on its authority to excuse someone from compliance with a sentence. When a court sentences a defendant, the court can order the defendant to pay a fine, up to the maximum amount provided by law. Once ordered, the court then has the authority to immediately suspend all or a portion of that amount. For instance, a court can order a defendant to pay a \$500.00 fine and suspend \$400.00 on condition that a defendant successfully complete probation. The court can then reinstate the suspended amount if it is later shown that the defendant failed to complete probation.

Once ordered, a court also has the authority to commute a sentence. For instance, if a court orders a defendant to pay a \$500.00 fine and the defendant is subsequently unable to pay the fine, or other circumstances exist, the court can excuse the defendant from this obligation. However, there are limits to a court's authority to commute a sentence that has already been executed by the defendant. The main problem lies in the court's authority, or lack thereof, over money that has been paid into the court as a fine. If, for example, a defendant is ordered to pay a \$500.00 fine and the defendant pays that amount, the money is not the property of the court. Pursuant to statute, all of the money is designated to specific entities and the court cannot control the money that belongs to those entities. Thus, although a court may have the authority to commute a sentence that has not

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been executed, the court does not have the authority to refund money that is in the possession of another entity. The entity which owns the fine money could possibly consent to a refund, but the court cannot order such without the entity's consent.

Because of this limitation, the best way for the court to handle this would be to forgo collection of the questioned amount. For instance, the court could order the defendant to pay a \$400.00 fine and suspend \$300.00 of the amount pending successful completion of probation. A condition of probation could be that the defendant provide proof of insurance six months or a year later. If the proof is provided, the defendant's probation could be terminated. If the proof is not provided, the court could reinstate the suspended portion and collect the remaining amounts. Although it is much more difficult to collect money after the fact, this is the preferred method, given the limitations that exist.

If you have any questions about this matter, please feel free to contact me. A plea in abeyance agreement would probably not change the above analysis, because the amounts collected under the agreement would still be earmarked to certain entities.